# International Factors Leasing Pte Ltd v Winds Cruises Pte Ltd & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R3-24-106-94

FAIZA TAMBY CHIK J

16 JUNE 1999

***Conflict of Laws*** *— Foreign judgment — Application to set aside foreign judgment registered in Malaysia — Whether extension of time to set aside foreign judgment should be allowed — Whether there was merit to set aside judgment — Reciprocal Enforcement of Judgments Act 1958 — Rules of the High Court 1980 O 67 rr 5(3), 7 & 8*

The plaintiff — a Singapore company — had obtained judgment against the sixth defendant in the Singapore High Court on 19 September 1994. The Singapore judgment was then registered by the plaintiff in Malaysia pursuant to the Reciprocal Enforcement of Judgments Act 1958 vide the Kuala Lumpur High Court. Notice to the judgment debtor of the registration of judgment was served on 12 January 1995. The plaintiff later proceeded to execute the registered judgment against the sixth defendant. The sixth defendant applied to set aside the registered judgment in Malaysia. The application was heard by the senior assistant registrar on 12 March 1999. The application was dismissed and hence the appeal.

The sixth defendant argued, inter alia, that: (i) he did not sign a copy of the notice as evidence of service and alleged that he knew of the order only on 17 April 1997; and (ii) the default judgment in Singapore is irregular and bad in law for non-service and void ab initio; and (iii) the plaintiff's judgment obtained in Singapore High Court in itself is irregular and non-conformity with the Singapore Rules of the High Court.

**Held**, dismissing the appeal:

(1) The sixth defendant must file the application for an extension of time within the time while it was still competent to set aside the registration. The application for an extension of time should have been made on or before 26 January 1995 as the notice to the judgment debtor of the registration of judgment was served on 12 January 1995. No explanation was as to why an application for extension of time was not made since 26 January 1995 (see p 170C–G). In any event, there was confirmation on 17 April 1997, that judgment had been entered against the sixth defendant and no proper explanation for the delay was given. All the relevant facts were then known. The sixth defendant did not take immediate steps to set aside the judgment but instead carried out investigations why appearance was entered for him and how the judgment in Singapore could have been entered against him (see p 171D–E).

(2) There was also no merits in the setting aside and the plaintiff had been prejudiced as the plaintiff had not been able to execute the judgment (see p 170F). If there was any irregularity or non-conformity of the Rules of the High Court of Singapore, then the defendant ought to rectify the error by applying to the Singapore court to set aside the default judgment. It is observed that the defendant had not to date done anything about this (see p 175H).

(3) The plaintiff had fully complied with the provisions in relation to the service of the registration order provided for under O 67 rr 7 and 8 of the RHC (see p 175I).

**[Bahasa Malaysia summary**

Plaintif — sebuah syarikat Singapura — telah memperoleh penghakiman terhadap defendan keenam di Mahkamah Tinggi Singapura pada 19 September 1994. Penghakiman Singapura itu kemudiannya telah didaftarkan oleh plaintif di Malaysia mengikut Akta Penguatkuasa Salingan Hukuman 1958 di Mahkamah Tinggi Kuala Lumpur. Notis kepada penghutang penghakiman tentang pendaftaran penghakiman tersebut telah diserahkan pada 12 Januari 1995. Plaintif kemudian seterusnya telah melaksanakan penghakiman berdaftar tersebut terhadap defendan keenam. Defendan keenam telah memohon untuk mengenepikan penghakiman yang didaftarkan di Malaysia tersebut. Permohonan tersebut telah didengar oleh penolong pendaftar kanan pada 12 Mac 1999. Permohonan telah ditolak dan oleh itu membuat rayuan.

Defendan keenam menghujahkan, antara lain, bahawa: (i) beliau tidak menandatangani salinan notis tersebut sebagai bukti penyerahan dan mendakwa bahawa beliau mengetahui tentang perintah tersebut hanya pada 17 April 1997; dan (ii) penghakiman ingkar di Singapura adalah di luar aturan dan tidak elok di sisi undang-undang kerana tidak diserahkan dan tidak sah ab initio; dan (iii) penghakiman plaintif yang diperolehi di Mahkamah Tinggi Singapura adalah dengan sendirinya di luar aturan dan tidak mematuhi Kaedah Mahkamah Tinggi Singapura.

**Diputuskan,** menolak rayuan tersebut:

(1) Defendan keenam mesti memfailkan permohonan bagi melanjutkan tempoh di dalam tempoh ketika ia masih kompeten untuk mengenepikan pendaftaran itu. Permohonan untuk melanjutkan tempoh sepatutnya telah dibuat pada atau sebelum 26 Januari 1995 kerana notis kepada penghutang penghakiman tentang pendaftaran penghakiman itu telah diserahkan pada 12 Januari 1995. Tiada penjelasan mengenai kenapa permohonan bagi melanjutkan tempoh tidak dibuat sejak 26 Januari 1995 (lihat ms 170C–G). Di dalam apa keadaanpun, terdapat pengesahan pada 17 April 1997 bahawa penghakiman telah

dimasuki terhadap defendan keenam dan tiada penjelasan yang wajar terhadap kelewatan telah diberi. Semua fakta-fakta yang relevan telah diketahui ketika itu. Defendan keenam tidak mengambil tindakan segera untuk mengetepikan penghakiman tersebut tetapi sebaliknya telah menjalankan siasatan mengapa kehadiran telah dimasukkan untuk beliau dan bagaimana penghakiman di Singapura boleh dimasukkan terhadap beliau (lihat ms 171D–E).

(2) Juga tiada merit untuk penepian tersebut dan plaintif telah diprejudiskan sebagai plaintif yang tidak dapat melaksanakan penghakiman itu (lihat ms 170F). Jika wujud apa-apa luar aturan atau ketidakpatuhan Kaedah Mahkamah Tinggi Singapura, maka defendan patut memperbetulkan kesilapan dengan memohon kepada mahkamah Singapura untuk mengetepikan penghakiman ingkar itu. Adalah diperhatikan bahawa defendan telah sehingga kini tidak berbuat apa-apa tentang perkara ini (lihat ms 175H).

(3) Plaintif telah mematuhi sepenuhnya peruntukan-peruntukan yang berkaitan dengan serahan perintah pendaftaran itu yang diperuntukkan di bawah A 67 kk 7 dan 8 KMT (lihat ms 175I).]

**Notes**

For cases on foreign judgment, see 3 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 978–996.

**Cases referred to**

*Alloy Automotive Sdn Bhd v Perusahaan Ironfield Sdn Bhd* [1986] 1 MLJ 382 (refd)
*Bank of New Zealand v Wong Kee Tat* [1990] 2 MLJ 435 (refd)
*DP Vijandran v Majlis Peguam* [1995] 3 MLJ 576 (refd)
*Newland Enterprise Pte Ltd v 'Santa Arona' (Owners of)* [1988] 2 MLJ 246 (refd)
*Ratnam v Cumarasamy & Anor* [1965] MLJ 228 (refd)
*Scott & English (M) Sdn Bhd v Leikie Regrigeration & Stainless Steel Industries Sdn Bhd & Ors* [1994] 2 MLJ 424 (refd)
*Sun-Line (Management) Ltd v Canpotex Shipping Services Ltd* [1986] 2 MLJ 348 (refd)
*Tan Ah Chai v Loke Jee Yah* [1998] 4 CLJ 73 (refd)

**Legislation referred to**

Reciprocal Enforcement of Judgments Act 1958
Rules of the High Court 1980 O 3 r 5, O 10 r 3, O 11 r 3(2), O 67 rr 5(3), 7, 8
Singapore Rules of Court O 11 r 3(3)

*CM Teng* (*Shook Lin & Bok*) for the plaintiff.
*Bharti Seth* (*RR Sethu*) for the sixth defendant.

**Faiza Thamby Chik J**: This is an appeal by the sixth defendant/appellant against the decision of the senior assistant registrar ('SAR') dismissing the sixth defendant's application with costs. The plaintiff is a Singapore company. The plaintiff had obtained judgment against the sixth defendant in the Singapore High Court on the 19 September 1994. The Singapore judgment was then registered by the plaintiff in Malaysia pursuant to the Reciprocal Enforcement Judgments Act 1958 vide the Kuala Lumpur High Court. Having registered the judgment in Malaysia the plaintiff proceeded to execute the registered judgment against the sixth defendant by issuing a writ of seizure and sale and a prohibitory order on the sixth defendant's property in Malaysia. The sixth defendant applied to set aside the registered judgment in Malaysia which was heard by the SAR on the 12 March 1999 and the SAR thereafter dismissed the sixth defendant's application to set aside the registered judgment with costs. Hence this appeal by the sixth defendant.

The documents which are before the court in this case are as follows:

(1) Originating summons ex parte dated 25 November 1994 (encl 2);

(2) Affidavit Shanti C Somaskanthan affirmed on 24 November 1994 (encl 3);

(3) Order dated 29 November 1994 (encl 4);

(4) Notice to judgment debtor of registration of foreign judgment in the High Court dated 11 January 1995;

(5) Affidavit of Abdul Latiff bin Mohamed Ibrahim affirmed on 24 November 1998 (encl 8);

(6) Summons in chambers dated 27 January 1998 to set aside the registration of judgment (encl 9);

(7) Affidavit of Teng Chong Moi affirmed on 26 February 1998 (encl 10);

(8) Affidavit of Eugene Tan Eu Jin affirmed on 13 March 1998 (encl 11);

(9) Affidavit of Abdul Latiff bin Mohamed Ibrahim affirmed on 14 April 1998 (encl 12);

(10) Affidavit of Eugene Tan Eu Jin affirmed on 14 May 1998 (encl 13);

(11) Affidavit of Eugene Tan Eu Jin affirmed on 21 April 1998 (encl 14);

(12) Affidavit of Abdul Latiff bin Mohamed Ibrahim affirmed on 12 June 1998 (encl 15);

(13) Affidavit of Jainil Bhandari affirmed on 17 July 1998 (encl 16);

(14) Affidavit of Abdul Latiff bin Mohamed Ibrahim affirmed on 7 September 1998 (encl 17);

(15) Affidavit of Lee Lai Ngo affirmed on 24 November 1998 (encl 18);

(16) Notice of appeal dated 16 March 1999 (encl 21);

It is observed that the sixth defendant can only make an application for an extension of time while it is competent for him to apply to have the registration of the Singapore Judgement set aside. The specific provision of O 67 r 5(3) of the RHC 1980 excludes the general provision of O 3 r 5 of the RHC 1980.

Specific provision: O 67 r 5(3) of the RHC 1980 provides:

> The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

General provision: O 3 r 5 of the RHC 1980 provides:

> (1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorized by these rules or by any judgment, order or direction, to do any act in any proceedings.
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> (2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

In *Tan Ah Chai v Loke Jee Yah* [1998] 4 CLJ 73 on p 78, the court said:

> The next issue that must be resolved is the submission of learned counsel for the respondent on the conflict between O 4 r 6 which permits a person to begin and carry on proceedings in a court by a solicitor and O 54 r 7 which prohibits representation by a solicitor in the use of the small claims procedure. There is clearly a contradiction between both the provisions. When two apparently inconsistent provisions occur in one Act of Parliament every attempt must be made to reconcile them by interpretation as they cannot both receive their full meaning as expressed (see *The South-Eastern Drainage Board (South Australia) v The Savings Bank of South Australia* (1939) 62 CLR 603). In attempting to reconcile both the provisions it must be remembered that O 54 r 7 is a later provision and specific while O 4 r 6 is earlier and general. The manner of resolving conflicts of this nature is stated succinctly by O'Connor, J in *Goodwill v Phillips* (1908) 7 CLR 1 at p 14:
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> > 'Where there is a general provision which, if applied in its entirety, would neutralize a special provision dealing with the same subject matter, the special provision must be read as a proviso to the general provision, and the general provision, in so far as it is inconsistent with the special provision, must be deemed not to apply.
> >
> > In the premises it is my view that O 54 r 7 must be read as a proviso to O 4 r 6. Such a construction will enable both the provisions to operate harmoniously.'

In *DP Vijandran v Majlis Peguam* [1995] 3 MLJ 576 at p 594, the Court of Appeal said:

> In these circumstances, we apprehend that the correct approach to the question of interpretation is to treat the general provision as having been displaced by the more specific. It is expressed in the Latin maxim *generalia specialibus non derogant* which is applied thus. Where an Act of Parliament contains a general provision which, when given a literal interpretation, covers a situation in respect of which a specific provision exists elsewhere in the enactment, the general provision is presumed to give way to the more specific provision.
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> This approach to the construction of a statute has been rationalized by Prof Pearce in his work entitled *Statutory Interpretation in Australia* (1st Ed) as follows:

'It is common sense that the draftsman will have intended the general provisions to give way should they be applicable to the same subject matter as is dealt with specifically. The draftsman often indicates his intention that this should be so by the inclusion of such words as 'subject to this Act' in a general provision. But these words are included more by way of abundant caution as the overriding idea that the Act should be read as a whole has the effect of making all provisions subject to one another.

*The* generalia specialibus rule *should, it is suggested, be observed more strictly in the interpretation of provisions in a particular Act than in the case of separate enactments.* In the latter circumstance it may well be that the draftsman did not consider the effect of the competing Acts. When a single document is being considered, however, the draftsman will be more likely to have relied on the rule. (Emphasis added).'

Applying the principle to the present case, the specific provisions must be read as a proviso to the general provision for extension of time. The sixth defendant must file the application for an extension of time within the time while it remained competent for the sixth defendant to set aside the registration. Hence the application for an extension of time should have been made on or before 26 January 1995.

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|---|---|
| Leave to register Singapore judgment | 29 November |
| Notice to judgment debtor of registration of judgment dated 11 January 1995 served | 12 January 1995 |
| Affidavit of service of Mahamud bin Mansor | 13 January 1995 |
| To set aside 14 days from date of service | 26 January 1995 |

Moreover I am of the view that there is no justified reasons for the delay in the application as well as no merits in the setting aside and the plaintiff had been prejudiced as the plaintiff had not been able to execute on the judgment.

No explanation was given in the affidavit in support (encl 8) as to why an application for extension of time was not made since 26 January 1995. It was only in rebuttal that the sixth defendant said the following:

(i) Was never served with the registration order;

(ii) Not his signature;

(iii) Knew of the order only on 17 April 1997 (see affidavit in reply of Abdul Latiff dated 14 April 1998 para 3 in encl 12).

There are however evidence to show that the sixth defendant had been served with the registration order (see affidavit of Teng Chong Moi (encl 10) — exh 'A' which was the affidavit of service of Mahamud bin Mansor, which stated at para 2:

Encik Abdul Latiff bin Mohamed Ibrahim telah mengaku kepada saya bahawa beliau adalah penama yang tercatit di dalam Notis berkenaan dan menandatangani penerimaan pada salinan pruf perintah ... .

A The sixth defendant had admitted that he was the person named and there was no averment rebutting this fact. The sixth defendant denied that it was his signature. As can be seen it was only an initial.

In *Alloy Automotive Sdn Bhd v Perusahaan Ironfield Sdn Bhd* [1986] 1 MLJ 382 at p 385–386, Lee Hun Hoe CJ (Borneo) said:

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> In his affidavit dated 30 April 1984 Choo Chak Low did not answer the matters raised in the above affidavit on Liew Mook. There is force in the appellant's contention that an affidavit must reply specifically to allegations, and if it does not, then those allegations not replied to must be taken to have been accepted. In *Dawkins v Prince Edward of Saxe Weimar* (1875–76) 1 QBD 499, 501 Blackburn J stated:

C

> > 'Now, upon that, if that is the true state of the case, we are of opinion that no cause of action can be shewn. Colonel Dawkins does not meet that in the affidavit in reply ...'

Again in para 28 in his affidavit in encl 8, Abdul Latiff stated:

D

> Further this application is being filed now, because I was made aware of the judgment only on 17 April 1997 when M/s Syed Ibrahim confirmed that a judgment was entered against me and thereafter time has lapsed as I need to appoint solicitors in Singapore to get these documents and all this tool time.

In any event, I am of the opinion that there was confirmation on 17 April 1997, that judgment had been entered, against the sixth defendant and E therefore why the reason for the delay. No proper explanation for delay was given (see 'AL 3'). All the relevant facts were then known. The sixth defendant did not take immediate steps to set aside the judgment but instead carried out investigations why appearance was entered for him and how the judgment in Singapore could have been entered against him. (See F reply of Joseph Tan Jude Benny & Scott — 2 June 1997 (AL-4). No action was taken from 2 June 1997 to 24 January 1998).

In *Ratnam v Cumarasamy & Anor* [1965] MLJ 228 at p 229, Lord Guest said:

> The Rules of Court must prima facie be obeyed, and in order to justify a court G in extending the time during which some step in procedure requires to be taken there must be some material upon which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.

In *Scott & English (M) Sdn Bhd v Leikie Regrigeration & Stainless Steel* H *Industries Sdn Bhd & Ors* [1994] 2 MLJ 424 at pp 428–429, Chong Siew Fai J (as he then was) said:

> The grant of extension of time to appeal is a discretion for the court. The following are normally to be considered:
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> (1) the length of the delay;
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> I (2) the reasons for the delay;
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> (3) the chances of the appeal succeeding if time for appealing is extended; and

(4) the degree of prejudice to the potential respondent if the application is granted.

Therefore, applying the principles of law enumerated by the above-mentioned cases on the exercise of the court's discretion to grant an extension of time, I am of the view that this is not a case for which the court should grant an extension of time. The length of delay and the reasons for the delay was purely the doing of the sixth defendant. In the circumstances, the SAR had rightfully exercise her discretion not to grant an extension of time.

Another matter in this appeal is the sixth defendant's reasons for setting aside the judgment which are given as follows:

(i) the default judgment in Singapore is irregular and bad in law for non-service and void ab initio;

(ii) that the plaintiffs judgment obtained in Singapore High Court in itself is irregular and non-conformity with Singapore Rules of the High Court and the terms of the guarantee agreement which is the basis of the plaintiff's claim against the sixth defendant.

(See affidavit of Abdul Latiff dated 24 January 1998 (encl 8) paras 19 — services out of jurisdiction. Order to serve out of jurisdiction dated 22 June 1994 (p 47). Affidavit in reply of Abdul Latiff 14 April 1998 (encl 12) para 9. Service by AR registered post dated 4 July 1994. Received 8 July 1994).

(Affidavit in reply of Abdul Latiff 12 June 1998 (encl 15). Para 4: specifically disallowed prayer 3. Prayer 3: the service of the aforesaid documents in accordance with cl 23.3 of the guarantee and mentioned in para 1 above shall be deemed good and sufficient service of the writ of summons on the sixth defendant. Therefore the sixth defendant contended that the service was not in compliance with the rules on service under the Singapore Rules of Court. Para 5: The fact that the mode of service is not stipulated — the only mode is by way of personal service. Affidavit of Abdul Latiff — 7 September 1988 (encl 17). See plaintiff's reply — affidavit of Eugene Tan Eu Jin 13 March 1998 (encl 11). Para 13: Documents were served on the sixth defendant by way of AR registered post. Affidavit of Eugene Tan Eu Jin 14 May 1998 (encl 13). Para 6: Does not need to stipulate the mode of service of the writ. Is clearly within O 10 r 3 of the Rules of the High Court. Affidavit of Jainil Bhandari 17 July 1998 (encl 16). Para 5: Order grants the plaintiff leave to serve a sealed copy of the writ on the sixth defendant AL at 1530 Jln Kasawari, Taman Ulu Klang, Ampang, Kuala Lumpur or elsewhere in Malaysia. Para 6: No need to stipulate the mode — O 11 r 3(3) of the Rules (exh JB-1'). 'An originating process which is to be served out of Singapore need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected' similar with our provision — O 11 r 5(3) RHC 1980. If service to be in Malaysia — O 11 r 4 also applies (see exh 'JB-3')).

A After a careful perusal of the above-mentioned documents, it can be seen that neither the sixth defendant nor his solicitors were legally qualified to state what is the position of the law in Singapore is. The proper forum to decide on the merits of the case is not before this court but the Singapore court. In any event, leave of the court has been obtained for service of writ out of jurisdiction. Once leave has been obtained, the form of the order is B as Form 13 of the Singapore Rules of Court. See *Pinsler on Civil Practice in Singapore and Malaysia* at p 54 which states:

> In Malaysia, the originating process may be served personally or by sending the document by prepaid AR registered post to the defendant's last known address.

C A writ which is to be served out of jurisdiction in accordance with a contract will not be deemed to have been duly served unless to serve the writ out of jurisdiction has been granted under O 11. Under O 11 r 3(3) of the Singapore Rules of Court, an originating process which is to be served out of jurisdiction need not be served personally on the person required to be D served so long as it is served on him in accordance with the law of the country in which service is effected. Service by way of prepaid registered post and service by contract is in accordance with the laws of Malaysia (see O 11 r 3(2) — O 11 and O 10 r 3 RHC 1980). In the present case, the leave of the Court to serve the writ out of jurisdiction was granted (see the order dated 22 June 1994 at pp 47 and 48 of encl 8). Hence there was therefore E proper service. Appearance was entered on 9 July 1994. As far as the plaintiff was concerned this was a valid appearance and it was not for the plaintiff to question the authority of the solicitors to act for the sixth defendant.

In *Newland Enterprise Pte Ltd v 'Santa Arona' (Owners of)* [1988] F 2 MLJ 246 at p 251, the court said:

> I shall next consider ground (b) which raises the issue of Messrs Darshan Singh & Co's authority to represent the defendants.
>
> Where an appearance is entered for a defendant without his authority, he can move by motion or summons to set aside the appearance with costs to be G paid by the solicitor on a solicitor and own client basis: see *Porter v Fraser* (1912) 29 TLR 91. In the present case, neither the plaintiffs nor the defendants took out such an application.

and at p 252, the court said:

> In the present case, however, I am concerned with a dispute as to authority, H not as between a client and his own solicitor, but as between a plaintiff and a solicitor who purports to represent a defendant. In other words, this is not a case where the defendants are asserting that Messrs Darshan Singh & Co had no authority to enter the conditional appearance on their behalf. It is, as I have said, the plaintiffs who are making that assertion and, when the material in support of that assertion is examined with care, it is obvious that there is no I evidentiary basis for it.

In *Bank of New Zealand v Wong Kee Tat* [1990] 2 MLJ 435 at p 437, Eusoff Chin J (as he then was) said:

Learned counsel for the defendant submitted that there was no judgment against the defendant because the subsequent service by post of the copy of the writ of summons and the amended statement of claim was not done by leave of the High Court of Singapore. The writ of summons itself was endorsed with the words: 'Not for service out of jurisdiction'. A

Learned defence counsel further submitted that there was an irregularity or slip in the course of the proceedings in the original court leading to the obtaining of the judgment by the plaintiff. That omission to comply with the rules of procedure by the original court goes to the root of jurisdiction, and that therefore it must be treated as if there is no judgment of the original court against the defendant. B

My finding is that the original court had jurisdiction to try the proceedings. In the exercise of its jurisdiction, the original court had granted leave for notice of the concurrent wit to be served on the defendant who chose not to defend himself. He did not even file an application to the original court to set aside the judgment in default. C

In *Pemberton v Hughes* [1899] 1 Ch 781, the plaintiff claimed her share of property from the estate of her deceased husband. The other beneficiary alleged that the plaintiff was not legally divorced by her former husband before she married the deceased because the writ of subpoena for the divorce proceedings issued by the Florida court did not comply with the rules of the Florida court. The rules there provided that the time for appearance must not be less than ten clear days from the date of the issue of the writ. The writ only gave nine clear days. Because of this irregularity, it was argued that the whole of the subsequent proceedings was rendered null and void, and therefore the decree for divorce was of no effect whatever. Consequently the plaintiff could not marry the deceased. The High Court came to the conclusion that this defect went to the root of the jurisdiction of the Florida court and was fatal to the validity of the divorce. On appeal, the Court of Appeal held: D E

> 'Here it is alleged there was no proper service. The true principle seems to me to be that a judgment, whether in personam or in rem, of a superior court having jurisdiction over the person, must be treated as valid till set aside either by the court itself or by some proceeding in the nature of a writ of error, unless there has been some defect in the initiation of proceedings, or in the course of proceedings, which would make it contrary to natural justice to treat the foreign judgment as valid, as, for instance, a case where there had been not only no service of process, but no knowledge of it. The allegation of no service alone would not in such a case avail the defendant.' F G

As stated earlier, there is no doubt that the defendant was subject to the jurisdiction of the original court. He had been served with notice of concurrent writ to enter an appearance in the original court. He had been given an opportunity of having a hearing in the original court. He could have entered a conditional appearance and challenged the jurisdiction of the original court. But he had deliberately refused to exercise that opportunity. H

In *Anthinarayana Mudaliar v Ajit Singh* [1953] MLJ 229, it was decided:

> 'A judgment or decree pronounced by the court of a foreign country will be treated and acted upon here as final, notwithstanding any irregularity of procedure under the local law, provided the foreign court had jurisdiction over the subject matter and the person brought before it, and the proceedings do not offend against natural justice.' I

A On the facts of the present case, the sixth defendant merely stated that it was not by way of personal service and thus it was an improper mode. There was however evidence of service of the summons (see acknowledgement of receipt of the summons on 8 July 1994 — exh 'ETEJ-2' of encl 11). The Singapore Court has jurisdiction as there was express submission to the jurisdiction of the court in Singapore (see cl 23 of the guarantee — p 138 of B encl 8 which reads:

> Each guarantor hereby irrevocably agrees that any legal action or proceedings against him with respect of this guarantee may be brought in the courts of Singapore and each guarantor hereby —
>
> C (i) irrevocably submits for himself and in respect of his property and assets generally and unconditionally to the jurisdiction of the aforesaid courts;
>
> (ii) acknowledges the competence of such courts, and agrees that a final judgment in any suit, action or proceeding brought in such courts shall be conclusive and binding upon such Guarantor and, if brought in the Courts of Singapore may be enforced in (to the extent (if any) permissible D under relevant law) any other court the jurisdiction of which the Guarantor is or may be subject, by a suit upon such judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of the Guarantor's indebtedness.
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> (see also cll 23.3 and 23.5 of the Guarantee).

E The defendant had also admitted to having executed the guarantee — paras 8 to 10 of the affidavit of 24 January 1998 (Encl 8).

In *Sun-Line (Management) Ltd v Canpotex Shipping Services Ltd* [1986] 2 MLJ 348 at p 351, Rajah J said:

> F An agreement to submit to the jurisdiction of a foreign court must be express (para 1051 of *Dicey v Morris)* and will not be implied. See *Sirdar Gurdyal Singh v The Rajah of Faridkote* [1894] AC 686 at p 670. Thus a court will refuse to imply such an agreement from an agreement that a contract is to be governed by the law of a foreign country. See *Dunbee Ltd v Gilman & Co (Australia) Pty Ltd* [1968] 2 Lloyds Rep 394 and para 722 of 8 *Halsbury's Laws of England* (4th Ed) on Conflict of Laws.
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> G Para 721 of the same *Halsbury* says 'The jurisdiction of the foreign court will also be recognized where the defendant has agreed to submit to its jurisdiction, as where he is a party to a contract providing all disputes between the parties are to be referred to the exclusive jurisdiction of that court'. *Feyerich v Hubbard* (1902) 71 LJKB 509; 86 LT 829*; Jeannot v Fuerst* (1909) 100 LT 816.

H In any event, I am of the view that if there was any irregularity or non-conformity of the Rules of the High Court of Singapore, then the defendant ought to rectify the error by applying to Singapore court to set aside the default judgment. It is observed that the defendant had not to date done anything about this.

I In the result I come to the conclusion that the plaintiff had fully complied with the provisions in relation to service of the registration order provided for under O 67 r 7 and r 8 of the RHC 1980 (endorsement of service) ie:

(a) Personal service on the defendant on 12 January 1995;

(b) Affidavit of service affirmed by Mahamud bin Mansor — 13 January 1995 (exh 'A' in encl 10);

(c) Already identified the person by his name and the defendant admitted that he was the person named in the notice. This fact was never denied by the defendant. Affidavit of service as not defective.

(d) Other reason given was that it was not his signature. However, that was just an initial and not a signature. Apart from that, the defendant merely denied receipt of the notice.

Therefore, the registration of judgment was proper and in accordance with the provisions of O 67 of the RHC and in the circumstances the appeal is hereby dismissed with costs.

*Appeal dismissed.*

Reported by Benjamin Yong